

32B-2-101. Title.

This chapter is known as the "Alcoholic Beverage Control Administration Act."

Enacted by Chapter 276, 2010 General Session

32B-2-102. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-2-201. Alcoholic Beverage Control Commission created.

(1) There is created the "Alcoholic Beverage Control Commission." The commission is the governing board over the department.

(2) (a) The commission is composed of seven part-time commissioners appointed by the governor with the consent of the Senate.

(b) No more than four commissioners may be of the same political party.

(3) (a) Except as required by Subsection (3)(b), as terms of commissioners expire, the governor shall appoint each new commissioner or reappointed commissioner to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of no more than three commissioners expire in a fiscal year.

(4) (a) When a vacancy occurs on the commission for any reason, the governor shall appoint a replacement for the unexpired term with the consent of the Senate.

(b) Unless removed in accordance with Subsection (6), a commissioner shall remain on the commission after the expiration of a term until a successor is appointed by the governor, with the consent of the Senate.

(5) A commissioner shall take the oath of office.

(6) (a) The governor may remove a commissioner from the commission for cause, neglect of duty, inefficiency, or malfeasance after a public hearing conducted by:

(i) the governor; or

(ii) an impartial hearing examiner appointed by the governor to conduct the hearing.

(b) At least 10 days before the hearing described in Subsection (6)(a), the governor shall provide the commissioner notice of:

(i) the date, time, and place of the hearing; and

(ii) the alleged grounds for the removal.

(c) The commissioner shall have an opportunity to:

(i) attend the hearing;

(ii) present witnesses and other evidence; and

(iii) confront and cross examine witnesses.

(d) After a hearing under this Subsection (6):

(i) the person conducting the hearing shall prepare written findings of fact and conclusions of law; and

(ii) the governor shall serve a copy of the prepared findings and conclusions upon the commissioner.

(e) If a hearing under this Subsection (6) is held before a hearing examiner, the hearing examiner shall issue a written recommendation to the governor in addition to complying with Subsection (6)(d).

(f) A commissioner has five days from the day on which the commissioner receives the findings and conclusions described in Subsection (6)(d) to file written objections to the recommendation before the governor issues a final order.

(g) The governor shall:

(i) issue the final order under this Subsection (6) in writing; and

(ii) serve the final order upon the commissioner.

(7) A commissioner may not receive compensation or benefits for the commissioner's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) (a) The governor shall annually appoint the chair of the commission. A commissioner serves as chair to the commission at the pleasure of the governor. If removed as chair, the commissioner continues to serve as a commissioner unless removed as a commissioner under Subsection (6).

(b) The commission shall elect:

(i) another commissioner to serve as vice chair; and

(ii) other commission officers as the commission considers advisable.

(c) A commissioner elected under Subsection (8)(b) shall serve in the office to which the commissioner is elected at the pleasure of the commission.

(9) (a) Each commissioner has equal voting rights on a commission matter when in attendance at a commission meeting.

(b) Four commissioners is a quorum for conducting commission business.

(c) A majority vote of the quorum present at a meeting is required for the commission to act.

(10) (a) The commission shall meet at least monthly, but may hold other meetings at times and places as scheduled by:

(i) the commission;

(ii) the chair; or

(iii) three commissioners upon filing a written request for a meeting with the chair.

(b) Notice of the time and place of a commission meeting shall be given to each commissioner, and to the public in compliance with Title 52, Chapter 4, Open and Public Meetings Act. A commission meeting is open to the public, except for a commission meeting or portion of a commission meeting that is closed by the commission as authorized by Sections 52-4-204 and 52-4-205.

Amended by Chapter 365, 2012 General Session

32B-2-201.5. Commission subcommittee -- Chair's oversight responsibilities.

(1) There is created within the commission two subcommittees consisting of members of the commission and known as the:

- (a) "Compliance, Licensing, and Enforcement Subcommittee"; and
- (b) "Operations and Procurement Subcommittee."

(2) A subcommittee shall have four members, including the chair of the commission. The chair of the commission shall appoint the members to a subcommittee.

(3) The director shall consult with the chair of the commission over:

- (a) the internal affairs of the department; and
- (b) subject to Section 32B-2-207, hiring and firing of upper management of the department.

(4) The commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall establish the duties of the subcommittees created under this section.

Enacted by Chapter 365, 2012 General Session

32B-2-202. Powers and duties of the commission.

(1) The commission shall:

- (a) consistent with the policy established by the Legislature by statute, act as a general policymaking body on the subject of alcoholic product control;
- (b) adopt and issue policies, rules, and procedures;
- (c) set policy by written rules that establish criteria and procedures for:
 - (i) issuing, denying, not renewing, suspending, or revoking a package agency, license, permit, or certificate of approval; and
 - (ii) determining the location of a state store, package agency, or retail licensee;
- (d) decide within the limits, and under the conditions imposed by this title, the number and location of state stores, package agencies, and retail licensees in the state;
- (e) issue, deny, suspend, revoke, or not renew the following package agencies, licenses, permits, or certificates of approval for the purchase, storage, sale, offer for sale, furnishing, consumption, manufacture, and distribution of an alcoholic product:
 - (i) a package agency;
 - (ii) a full-service restaurant license;
 - (iii) a master full-service restaurant license;
 - (iv) a limited-service restaurant license;
 - (v) a master limited-service restaurant license;
 - (vi) a club license;
 - (vii) an airport lounge license;
 - (viii) an on-premise banquet license;
 - (ix) a resort license, under which four or more sublicenses may be included;
 - (x) an on-premise beer retailer license;
 - (xi) a reception center license;
 - (xii) a beer-only restaurant license;
 - (xiii) subject to Subsection (4), a single event permit;
 - (xiv) subject to Subsection (4), a temporary beer event permit;
 - (xv) a special use permit;

- (xvi) a manufacturing license;
- (xvii) a liquor warehousing license;
- (xviii) a beer wholesaling license; and
- (xix) one of the following that holds a certificate of approval:
 - (A) an out-of-state brewer;
 - (B) an out-of-state importer of beer, heavy beer, or flavored malt beverages; and
 - (C) an out-of-state supplier of beer, heavy beer, or flavored malt beverages;
- (f) in accordance with Section 32B-5-205, issue, deny, suspend, or revoke conditional licenses for the purchase, storage, sale, furnishing, consumption, manufacture, and distribution of an alcoholic product;
- (g) prescribe the duties of the department in assisting the commission in issuing a package agency, license, permit, or certificate of approval under this title;
- (h) to the extent a fee is not specified in this title, establish a fee allowed under this title in accordance with Section 63J-1-504;
- (i) fix prices at which liquor is sold that are the same at all state stores, package agencies, and retail licensees;
- (j) issue and distribute price lists showing the price to be paid by a purchaser for each class, variety, or brand of liquor kept for sale by the department;
- (k) (i) require the director to follow sound management principles; and
 - (ii) require periodic reporting from the director to ensure that:
 - (A) sound management principles are being followed; and
 - (B) policies established by the commission are being observed;
- (l) (i) receive, consider, and act in a timely manner upon the reports, recommendations, and matters submitted by the director to the commission; and
 - (ii) do the things necessary to support the department in properly performing the department's duties;
- (m) obtain temporarily and for special purposes the services of an expert or person engaged in the practice of a profession, or a person who possesses a needed skill if:
 - (i) considered expedient; and
 - (ii) approved by the governor;
- (n) prescribe the conduct, management, and equipment of premises upon which an alcoholic product may be stored, sold, offered for sale, furnished, or consumed;
- (o) make rules governing the credit terms of beer sales within the state to retail licensees; and
- (p) in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, take disciplinary action against a person subject to administrative action.

(2) Consistent with the policy established by the Legislature by statute, the power of the commission to do the following is plenary, except as otherwise provided by this title, and not subject to review:

- (a) establish a state store;
- (b) issue authority to act as a package agent or operate a package agency; and
- (c) issue or deny a license, permit, or certificate of approval.

(3) If the commission is authorized or required to make a rule under this title, the commission shall make the rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) Notwithstanding Subsections (1)(e)(xiii) and (xiv), the director or deputy director may issue an event permit in accordance with Chapter 9, Event Permit Act.

Amended by Chapter 349, 2013 General Session

32B-2-203. Department of Alcoholic Beverage Control created.

(1) There is created the Department of Alcoholic Beverage Control. The department is governed by the commission.

(2) The director of alcoholic beverage control appointed under Section 32B-2-205 shall administer the department.

(3) The director shall allocate the duties within the department into the divisions, bureaus, sections, offices, and committees as the director considers necessary for the administration of this title.

(4) The department shall cooperate with any other recognized agency in the administration of this title and in the enforcement of a policy or rule of the commission or policy of the director.

Enacted by Chapter 276, 2010 General Session

32B-2-204. Powers and duties of the department -- Immunity.

(1) The department shall control liquor merchandise inventory including:

- (a) listing and delisting a product;
- (b) the procedures for testing a new product;
- (c) purchasing policy;
- (d) turnover requirements for a regularly coded product to be continued; and
- (e) the disposition of discontinued, distressed, or unsaleable merchandise.

(2) (a) The department shall report to the governor on the administration of this title:

- (i) as the governor may require; and
- (ii) annually by no later than November 30, for the fiscal year ending June 30 of the year in which the report is made.

(b) A report under this Subsection (2) shall contain:

- (i) a statement of the nature and amount of the business transacted by the department during the year;
- (ii) a statement of the department's assets and liabilities including a profit and loss account, and other accounts and matters necessary to show the results of operations of the department for the year;

(iii) general information on the application of this title in the state; and

(iv) any other information requested by the governor.

(c) The department shall submit a copy of a report described in this Subsection (2) to the Legislature.

(3) The department shall maintain insurance against loss on each motor vehicle operated by it on any public highway. A motor vehicle shall be covered for:

- (a) liability imposed by law upon the department for damages from bodily injuries suffered by one or more persons by reason of the ownership, maintenance, or use of the motor vehicle; and

(b) liability or loss from damage to or destruction of property of any description, including liability of the department for the resultant loss of use of the property, which results from accident due to the ownership, maintenance, or use of the motor vehicle.

(4) (a) The department may sue, be sued, and defend in a proceeding, in a court of law or otherwise, in the name of the department.

(b) An action may not be taken:

(i) against the commission; or

(ii) in the name of a commissioner.

(5) The department is liable to respond in damages in a case if a private corporation under the same circumstances would be liable.

(6) (a) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies in an action commenced against the department for damages sustained as a result of department ownership, maintenance, or use of a motor vehicle under Subsections (4) and (5).

(b) In an action described in Subsection (6)(a), the commission and each commissioner are immune from suit.

Enacted by Chapter 276, 2010 General Session

32B-2-205. Director of alcoholic beverage control.

(1) (a) In accordance with Subsection (1)(b), the governor, with the consent of the Senate, shall appoint a director of alcoholic beverage control to a four-year term. The director may be appointed to more than one four-year term. The director is the administrative head of the department.

(b) (i) The governor shall appoint the director from nominations made by the commission.

(ii) The commission shall submit the nomination of three individuals to the governor for appointment of the director.

(iii) By no later than 30 calendar days from the day on which the governor receives the three nominations submitted by the commission, the governor may:

(A) appoint the director; or

(B) reject the three nominations.

(iv) If the governor rejects the nominations or fails to take action within the 30-day period, the commission shall nominate three different individuals from which the governor may appoint the director or reject the nominations until such time as the governor appoints the director.

(v) The governor may reappoint the director without seeking nominations from the commission. Reappointment of a director is subject to the consent of the Senate.

(c) If there is a vacancy in the position of director, during the nomination process described in Subsection (1)(b), the governor may appoint an interim director for a period of up to 30 calendar days. If a director is not appointed within the 30-day period, the interim director may continue to serve beyond the 30-day period subject to the consent of the Senate at the next scheduled time for the Senate giving consent to appointments of the governor. Except that if the Senate does not act on the consent to the appointment of the interim director within 60 days of the end of the initial 30-day period, the interim director may continue as the interim director.

- (d) The director may be terminated by:
 - (i) the commission by a vote of four commissioners; or
 - (ii) the governor after consultation with the commission.
- (e) The director may not be a commissioner.
- (f) The director shall:
 - (i) be qualified in administration;
 - (ii) be knowledgeable by experience and training in the field of business management; and
 - (iii) possess any other qualification prescribed by the commission.
- (2) The governor shall establish the director's compensation within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.
- (3) The director shall:
 - (a) carry out the policies of the commission;
 - (b) carry out the policies of the department;
 - (c) fully inform the commission of the operations and administrative activities of the department; and
 - (d) assist the commission in the proper discharge of the commission's duties.

Amended by Chapter 365, 2012 General Session

32B-2-206. Powers and duties of the director.

Subject to the powers and responsibilities of the commission under this title, the director:

- (1) (a) shall prepare and propose to the commission general policies, rules, and procedures governing the administrative activities of the department; and
- (b) may submit other recommendations to the commission as the director considers in the interest of the commission's or the department's business;
- (2) within the general policies, rules, and procedures of the commission, shall:
 - (a) provide day-to-day direction, coordination, and delegation of responsibilities in the administrative activities of the department's business; and
 - (b) make internal department policies and procedures relating to:
 - (i) department personnel matters; and
 - (ii) the day-to-day operation of the department;
- (3) subject to Section 32B-2-207, shall appoint or employ personnel as considered necessary in the administration of this title, and with regard to the personnel shall:
 - (a) prescribe the conditions of employment;
 - (b) define the respective duties and powers; and
 - (c) fix the remuneration in accordance with Title 67, Chapter 19, Utah State Personnel Management Act;
- (4) shall establish and secure adherence to a system of reports, controls, and performance in matters relating to personnel, security, department property management, and operation of:
 - (a) a department office;
 - (b) a warehouse;
 - (c) a state store; and

- (d) a package agency;
- (5) within the policies, rules, and procedures approved by the commission and provisions of law, shall purchase, store, keep for sale, sell, import, and control the storage, sale, furnishing, transportation, or delivery of an alcoholic product;
- (6) shall prepare for commission approval:
 - (a) recommendations regarding the location, establishment, relocation, and closure of a state store or package agency;
 - (b) recommendations regarding the issuance, denial, nonrenewal, suspension, or revocation of a license, permit, or certificate of approval;
 - (c) an annual budget, proposed legislation, and reports as required by law and sound business principles;
 - (d) plans for reorganizing divisions of the department and the functions of the divisions;
 - (e) manuals containing commission and department policies, rules, and procedures;
 - (f) an inventory control system;
 - (g) any other report or recommendation requested by the commission;
 - (h) rules described in Subsection 32B-2-202(1)(o) governing the credit terms of the sale of beer;
 - (i) rules governing the calibration, maintenance, and regulation of a calibrated metered dispensing system;
 - (j) rules governing the display of a list of types and brand names of liquor furnished through a calibrated metered dispensing system;
 - (k) price lists issued and distributed showing the price to be paid for each class, variety, or brand of liquor kept for sale at a state store, package agency, or retail licensee;
 - (l) policies or rules prescribing the books of account maintained by the department and by a state store, package agency, or retail licensee; and
 - (m) a policy prescribing the manner of giving and serving a notice required by this title or rules made under this title;
- (7) shall make available through the department to any person, upon request, a copy of a policy made by the director;
- (8) shall make and maintain a current copy of a manual that contains the rules and policies of the commission and department available for public inspection;
- (9) (a) after consultation with the governor, shall determine whether an alcoholic product should not be sold, offered for sale, or otherwise furnished in an area of the state during a period of emergency that is proclaimed by the governor to exist in that area; and
 - (b) shall issue a necessary public announcement or policy with respect to the determination described in Subsection (9)(a);
- (10) issue event permits in accordance with Chapter 9, Event Permit Act; and
- (11) shall perform any other duty required by the commission or by law.

Amended by Chapter 365, 2012 General Session

32B-2-207. Department employees -- Requirements.

(1) "Upper management" means the director, a deputy director, or other Schedule AD, AR, or AS employee of the department, as defined in Section 67-19-15, except for the director of internal audits and auditors hired by the director of internal audits under Section 32B-2-302.5.

(2) (a) Subject to this title, including the requirements of Chapter 1, Part 3, Qualifications and Background, the director may prescribe the qualifications of a department employee.

(b) The director may hire an employee who is upper management only with the approval of four commissioners voting in an open meeting.

(c) Except as provided in Section 32B-1-303, the executive director may dismiss an employee who is upper management after consultation with the chair of the commission.

(3) (a) A person who seeks employment with the department shall file with the department an application under oath or affirmation in a form prescribed by the commission.

(b) Upon receiving an application, the department shall determine whether the individual is:

- (i) of good moral character; and
- (ii) qualified for the position sought.

(c) The department shall select an individual for employment or advancement with the department in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

(4) The following are not considered a department employee:

- (a) a package agent;
- (b) a licensee;
- (c) a staff member of a package agent; or
- (d) staff of a licensee.

(5) The department may not employ a minor to:

- (a) work in:
 - (i) a state store; or
 - (ii) a department warehouse; or
- (b) engage in an activity involving the handling of an alcoholic product.

Amended by Chapter 365, 2012 General Session

32B-2-208. Services of State Health Laboratory.

The State Health Laboratory shall make its services available to the department when necessary. The department shall pay for the services from the Liquor Control Fund to the Department of Health.

Enacted by Chapter 276, 2010 General Session

32B-2-209. Prohibited interests, relationships, and actions.

(1) As used in this section:

- (a) "Applicable department employee" means a department employee who is:
 - (i) designated as a deputy or assistant director;

- (ii) a chief administrative officer of a division within the department;
- (iii) a department compliance officer; or
- (iv) an employee directly performing purchasing, licensing, or compliance functions of the department.

(b) "Immediate family" means an individual's:

- (i) spouse; or
- (ii) child who is younger than 18 years of age.

(c) "Permit" does not include:

- (i) an industrial or manufacturing use permit;
- (ii) a scientific or educational use permit; or
- (iii) a religious wine use permit.

(2) In addition to being subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, an individual who is a commissioner, the director, or an applicable department employee may not:

(a) have a pecuniary interest, whether as the holder of stock or other securities other than a mutual fund, in a person who applies for or holds a package agency, license, or permit under this title;

(b) otherwise have a conflict of interest with a person who applies for or holds a package agency, license, or permit under this title;

(c) have an office, position, or relationship, or be engaged in a business or avocation that interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment;

(d) have a direct business relationship with a person subject to administrative action under this title;

(e) accept a gift, gratuity, emolument, or employment from:

(i) a person who applies for or holds a package agency, license, or permit under this title; or

(ii) an officer, agent, or employee of a person who applies for or holds a package agency, license, or permit under this title, except that a commissioner, the director, or an applicable department employee may accept a gift from an officer, agent, or employee if the gift is equal to or less than \$50; or

(f) solicit, suggest, request, or recommend, directly or indirectly, the appointment of any person to any office or employment with a person who applies for or holds a package agency, license, or permit under this title.

(3) An immediate family member of a commissioner, the director, or an applicable department employee may not:

(a) have a pecuniary interest, whether as the holder of stock or other securities other than a mutual fund, in a person who applies for or holds a package agency, license, or permit under this title;

(b) otherwise have a conflict of interest with a person who applies for or holds a package agency, license, or permit under this title;

(c) have an office, position, or relationship, or be engaged in a business or avocation that interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment of the commissioner, director, or applicable department employee for whom the person is immediate family;

(d) accept a gift, gratuity, emolument, or employment from:

(i) a person who applies for or holds a package agency, license, or permit under this title; or

(ii) an officer, agent, or employee of a person who applies for or holds a package agency, license, or permit under this title, except that an immediate family member may accept a gift from an officer, agent, or employee if the gift is equal to or less than \$50; or

(e) solicit, suggest, request, or recommend, directly or indirectly, the appointment of any person to any office or employment with a person who applies for or holds a package agency, license, or permit under this title.

(4) An officer, agent, attorney, or employee of a person who applies for or holds a package agency, license, or permit under this title may not directly or indirectly solicit, request, or recommend to the governor, any state senator, the commission, or the department the appointment of any person:

(a) as a commissioner;

(b) as director of the department; or

(c) to a department staff position.

(5) (a) A commissioner shall disclose during a meeting of the commission a potential violation of this section, including the existence and nature of a professional, financial, business, or personal interest with a person who holds, or an applicant for, a package agency, license, or permit issued under this title that may result in a violation of this section.

(b) After a commissioner makes a disclosure under Subsection (5)(a):

(i) the commission may, by motion, determine whether there is a potential violation of this section;

(ii) if the commission determines that there is a potential violation of this section:

(A) the commission shall notify the governor; and

(B) the commissioner may not vote on any matter that would result in the potential violation of this section; and

(iii) if the commission determines that there is not a potential violation of this section, a commissioner may elect whether to vote on the issue that gives rise to the disclosure under Subsection (5)(a).

(c) The commission shall record any declaration of a potential violation of this section in the minutes of the meeting.

Amended by Chapter 365, 2012 General Session

32B-2-210. Alcoholic Beverage Control Advisory Board.

(1) There is created within the department an advisory board known as the "Alcoholic Beverage Control Advisory Board."

(2) The advisory board shall consist of 12 members as follows:

(a) the following voting members appointed by the commission, a representative of:

(i) a full-service restaurant licensee;

(ii) a limited-service restaurant licensee;

(iii) a beer-only restaurant licensee;

(iv) a social club licensee;

- (v) a fraternal club licensee;
- (vi) a dining club licensee;
- (vii) a wholesaler licensee;
- (viii) an on-premise banquet licensee;
- (ix) an on-premise beer retailer licensee; and
- (x) a reception center licensee;
- (b) the chair of the Utah Substance Abuse Advisory Council, or the chair's designee, who serves as a voting member; and
- (c) the chair of the commission or the chair's designee from the members of the commission, who shall serve as a nonvoting member.
- (3) (a) Except as required by Subsection (3)(b), as terms of current voting members of the advisory board expire, the commission shall appoint each new member or reappointed member to a four-year term beginning July 1 and ending June 30.
- (b) Notwithstanding the requirements of Subsection (3)(a), the commission shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of voting advisory board members are staggered so that approximately half of the advisory board is appointed every two years.
- (c) No two members of the board may be employed by the same company or nonprofit organization.
- (4) (a) When a vacancy occurs in the membership for any reason, the commission shall appoint a replacement for the unexpired term.
- (b) The commission shall terminate the term of a voting advisory board member who ceases to be representative as designated by the member's original appointment.
- (5) The advisory board shall meet no more than quarterly as called by the chair for the purpose of advising the commission and the department, with discussion limited to administrative rules made under this title.
- (6) The chair of the commission or the chair's designee shall serve as the chair of the advisory board and call the necessary meetings.
- (7) (a) Six members of the board constitute a quorum of the board.
- (b) An action of the majority when a quorum is present is the action of the board.
- (8) The department shall provide staff support to the advisory board.
- (9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Enacted by Chapter 365, 2012 General Session

32B-2-301. State property -- Liquor Control Fund -- Markup Holding Fund.

- (1) The following are property of the state:
 - (a) the money received in the administration of this title, except as otherwise provided; and
 - (b) property acquired, administered, possessed, or received by the department.
- (2) (a) There is created an enterprise fund known as the "Liquor Control Fund."

(b) Except as provided in Sections 32B-3-205 and 32B-2-304, money received in the administration of this title shall be transferred to the Liquor Control Fund.

(3) (a) There is created an enterprise fund known as the "Markup Holding Fund."

(b) In accordance with Section 32B-2-304, the State Tax Commission shall deposit revenue remitted to the State Tax Commission from the markup imposed under Section 32B-2-304 into the Markup Holding Fund.

(c) Money deposited into the Markup Holding Fund may be expended:

(i) to the extent appropriated by the Legislature; and

(ii) to fund the deposits required by Subsection 32B-2-304(4) and Subsection 32B-2-305(4).

(4) The department may draw from the Liquor Control Fund only to the extent appropriated by the Legislature or provided for by statute, except that the department may draw by warrant without an appropriation from the Liquor Control Fund for an expenditure that is directly incurred by the department:

(a) to purchase an alcoholic product;

(b) to transport an alcoholic product from the supplier to a warehouse of the department; and

(c) for variances related to an alcoholic product.

(5) The department shall transfer annually from the Liquor Control Fund and the State Tax Commission shall transfer annually from the Markup Holding Fund to the General Fund a sum equal to the amount of net profit earned from the sale of liquor since the preceding transfer of money under this Subsection (5). The transfers shall be calculated by no later than September 1 and made by no later than September 30 after a fiscal year. The Division of Finance may make year-end closing entries in the Liquor Control Fund and the Markup Holding Fund in order to comply with Subsection 51-5-6(2).

(6) (a) By the end of each day, the department shall:

(i) make a deposit to a qualified depository, as defined in Section 51-7-3; and

(ii) report the deposit to the state treasurer.

(b) A commissioner or department employee is not personally liable for a loss caused by the default or failure of a qualified depository.

(c) Money deposited in a qualified depository is entitled to the same priority of payment as other public funds of the state.

(7) If the cash balance of the Liquor Control Fund is not adequate to cover a warrant drawn against the Liquor Control Fund by the department, the cash resources of the General Fund may be used to the extent necessary. At no time may the fund equity of the Liquor Control Fund fall below zero.

Amended by Chapter 349, 2013 General Session

32B-2-302. Exempt from Division of Finance -- Application of procurement -- External audits.

(1) (a) The laws that govern the Division of Finance are not applicable to the department in the purchase and sale of an alcoholic product.

(b) The department is exempt from Title 63G, Chapter 6a, Utah Procurement Code, for the purchase of an alcoholic product. The department is subject to Title 63G,

Chapter 6a, Utah Procurement Code, for any purchase other than for an alcoholic product.

(2) The state auditor shall:

(a) annually perform a financial audit of the department's accounts; and

(b) determine the scope and focus of the financial audit in an open meeting of the commission before the audit commences.

(3) Every two years, beginning for fiscal year 2013-14, the state auditor shall conduct an audit of the department's:

(a) management operations, best practices, and efficiency; and

(b) ethics and statutory compliance.

(4) In addition to complying with Subsections (2) and (3), the state auditor may engage in an activity related to the department or commission allowed under Utah Constitution, Article VII, Section 15 or Title 67, Chapter 3, Auditor.

(5) The state auditor shall forward an audit report issued under Subsection (2) or (3) to the following by no later than 30 days after the day on which the audit report is made:

(a) the governor;

(b) the Legislative Management Committee;

(c) the director; and

(d) the legislative auditor general.

Amended by Chapter 349, 2013 General Session

32B-2-302.5. Internal audits.

(1) In accordance with Title 63I, Chapter 5, Utah Internal Audit Act, the department shall conduct various types of auditing procedures determined by the commission through an internal audit division.

(2) (a) The commission shall appoint an internal audit director who shall serve at the pleasure of the commission.

(b) The internal audit director shall hire auditors in the division with the approval of the commission.

(c) The internal audit director may dismiss an auditor with the approval of the commission.

(3) Notwithstanding Section 63I-5-301, the commission shall serve as the audit committee.

(4) Subject to the other provisions of this section, the internal audit director shall have the powers and duties described in Section 63I-5-401 or any other duty prescribed by the chair of the commission. The internal audit director shall oversee and materially participate in internal audits conducted under this section.

(5) (a) Once an internal audit is completed, the internal audit director shall provide an internal audit report to the director, the chair of the commission, and the other commissioners.

(b) Within five business days of receipt of the internal audit, the director shall prepare a written response and deliver it to the chair of the commission and the other commissioners.

(c) Within five business days of receipt of the director's written response under

Subsection (5)(b), the chair of the commission may prepare a separate response.

(d) Within 12 business days of the internal audit being given to the director, chair of the commission, and the other commissioners under Subsection (5)(a), the chair of the commission shall forward the audit and any response to:

- (i) the governor;
- (ii) the legislative auditor general; and
- (iii) the Legislative Management Committee.

(e) Within 120 calendar days of an internal audit being completed, the commission shall prepare a report to the governor describing steps taken to implement the recommendations of the audit or a detailed explanation of why recommendations have not been implemented. The chair of the commission shall forward the report to:

- (i) the legislative auditor general; and
- (ii) the Legislative Management Committee.

(f) The chair of the commission shall make such other reports as the governor requests.

Enacted by Chapter 365, 2012 General Session

32B-2-303. Purchase of liquor.

(1) The department may not purchase or stock spirituous liquor in a container smaller than 200 milliliters, except as otherwise allowed by the commission.

(2) (a) An order by the department for the purchase of liquor, or a cancellation by the department of an order of liquor:

- (i) shall be executed in writing by the department; and
- (ii) is not valid or binding unless executed in writing.

(b) The department shall maintain a copy of an order or cancellation on file for at least three years.

(c) An electronic record satisfies Subsections (2)(a) and (b) pursuant to Title 46, Chapter 4, Uniform Electronic Transactions Act.

Amended by Chapter 307, 2011 General Session

32B-2-304. Liquor price -- School lunch program -- Remittance of markup.

(1) For purposes of this section:

(a) (i) "Landed case cost" means:

- (A) the cost of the product; and
- (B) inbound shipping costs incurred by the department.

(ii) "Landed case cost" does not include the outbound shipping cost from a warehouse of the department to a state store.

(b) "Proof gallon" has the same meaning as in 26 U.S.C. Sec. 5002.

(c) Notwithstanding Section 32B-1-102, "small brewer" means a brewer who manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored malt beverage.

(2) Except as provided in Subsection (3):

(a) spirituous liquor sold by the department within the state shall be marked up in an amount not less than 86% above the landed case cost to the department;

(b) wine sold by the department within the state shall be marked up in an amount not less than 86% above the landed case cost to the department;

(c) heavy beer sold by the department within the state shall be marked up in an amount not less than 64.5% above the landed case cost to the department; and

(d) a flavored malt beverage sold by the department within the state shall be marked up in an amount not less than 86% above the landed case cost to the department.

(3) (a) Liquor sold by the department to a military installation in Utah shall be marked up in an amount not less than 15% above the landed case cost to the department.

(b) Except for spirituous liquor sold by the department to a military installation in Utah, spirituous liquor that is sold by the department within the state shall be marked up 47% above the landed case cost to the department if:

(i) the spirituous liquor is manufactured by a manufacturer producing less than 30,000 proof gallons of spirituous liquor in a calendar year; and

(ii) the manufacturer applies to the department for a reduced markup.

(c) Except for wine sold by the department to a military installation in Utah, wine that is sold by the department within the state shall be marked up 47% above the landed case cost to the department if:

(i) the wine is manufactured by a manufacturer producing less than 20,000 gallons of wine in a calendar year; and

(ii) the manufacturer applies to the department for a reduced markup.

(d) Except for heavy beer sold by the department to a military installation in Utah, heavy beer that is sold by the department within the state shall be marked up 30% above the landed case cost to the department if:

(i) a small brewer manufactures the heavy beer; and

(ii) the small brewer applies to the department for a reduced markup.

(e) The department shall verify an amount described in Subsection (3)(b), (c), or (d) pursuant to a federal or other verifiable production report.

(4) The department shall deposit 10% of the total gross revenue from sales of liquor with the state treasurer to be credited to the Uniform School Fund and used to support the school lunch program administered by the State Board of Education under Section 53A-19-201.

(5) This section does not prohibit the department from selling discontinued items at a discount.

(6) (a) The department shall collect the markup and remit the markup collected by the department under this section:

(i) to the State Tax Commission monthly on or before the last day of the month immediately following the last day of the previous month; and

(ii) using a form prescribed by the State Tax Commission.

(b) For liquor provided to a package agency on consignment, the department shall remit the markup to the State Tax Commission for the month during which the liquor is provided to the package agency regardless of when the package agency pays the department for the liquor provided to the package agency.

(c) The State Tax Commission shall deposit revenues remitted to it under Subsection (6)(a) into the Markup Holding Fund created in Section 32B-2-301.

(d) The assessment, collection, and refund of a markup under this section shall be in accordance with Title 59, Chapter 1, Part 14, Assessment, Collection, and Refunds Act.

(e) The department if it fails to comply with this Subsection (6), is subject to penalties as provided in Section 59-1-401 and interest as provided in Section 59-1-402.

(f) The State Tax Commission may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures under this Subsection (6).

Amended by Chapter 357, 2012 General Session

32B-2-305. Alcoholic Beverage Control Act Enforcement Fund.

(1) As used in this section:

(a) "Alcohol-related law enforcement officer" is as defined in Section 32B-1-201.

(b) "Enforcement ratio" is as defined in Section 32B-1-201.

(c) "Fund" means the Alcoholic Beverage Control Act Enforcement Fund created in this section.

(2) There is created an expendable special revenue fund known as the "Alcoholic Beverage Control Act Enforcement Fund."

(3) (a) The fund consists of:

(i) deposits made under Subsection (4); and

(ii) interest earned on the fund.

(b) The fund shall earn interest. Interest on the fund shall be deposited into the fund.

(4) After the deposit made under Section 32B-2-304 for the school lunch program, the department shall deposit 1% of the total gross revenue from the sale of liquor with the state treasurer to be credited to the fund to be used by the Department of Public Safety as provided in Subsection (5).

(5) (a) The Department of Public Safety shall expend money from the fund to supplement appropriations by the Legislature so that the Department of Public Safety maintains a sufficient number of alcohol-related law enforcement officers such that beginning on July 1, 2012, each year the enforcement ratio as of July 1 is equal to or less than the number specified in Section 32B-1-201.

(b) Beginning July 1, 2012, four alcohol-related law enforcement officers shall have as a primary focus the enforcement of this title in relationship to restaurants.

Amended by Chapter 400, 2013 General Session

32B-2-306. Underage drinking prevention media and education campaign.

(1) As used in this section:

(a) "Advisory council" means the Utah Substance Abuse Advisory Council created in Section 63M-7-301.

(b) "Restricted account" means the Underage Drinking Prevention Media and Education Campaign Restricted Account created in this section.

(2) (a) There is created a restricted account within the General Fund known as the "Underage Drinking Prevention Media and Education Campaign Restricted

Account."

(b) The restricted account consists of:

(i) deposits made under Subsection (3); and

(ii) interest earned on the restricted account.

(3) The department shall deposit 0.6% of the total gross revenue from sales of liquor with the state treasurer, as determined by the total gross revenue collected for the fiscal year two years preceding the fiscal year for which the deposit is made, to be credited to the restricted account and to be used by the department as provided in Subsection (5).

(4) The advisory council shall:

(a) provide ongoing oversight of a media and education campaign funded under this section;

(b) create an underage drinking prevention workgroup consistent with guidelines proposed by the advisory council related to the membership and duties of the underage drinking prevention workgroup;

(c) create guidelines for how money appropriated for a media and education campaign can be used;

(d) include in the guidelines established pursuant to this Subsection (4) that a media and education campaign funded under this section is carefully researched and developed, and appropriate for target groups; and

(e) approve plans submitted by the department in accordance with Subsection (5).

(5) (a) Subject to appropriation from the Legislature, the department shall expend money from the restricted account to direct and fund one or more media and education campaigns designed to reduce underage drinking in cooperation with the advisory council.

(b) The department shall:

(i) in cooperation with the underage drinking prevention workgroup created under Subsection (4), prepare and submit a plan to the advisory council detailing the intended use of the money appropriated under this section;

(ii) upon approval of the plan by the advisory council, conduct the media and education campaign in accordance with the guidelines made by the advisory council; and

(iii) submit to the advisory council annually by no later than October 1, a written report detailing the use of the money for the media and education campaigns conducted under this Subsection (5) and the impact and results of the use of the money during the prior fiscal year ending June 30.

Enacted by Chapter 388, 2012 General Session

32B-2-401. Title.

This part is known as the "Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act."

Amended by Chapter 119, 2014 General Session

32B-2-402. Definitions -- Calculations.

(1) As used in this part:

(a) "Account" means the Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account created in Section 32B-2-403.

(b) "Advisory council" means the Utah Substance Abuse Advisory Council created in Section 63M-7-301.

(c) "Alcohol-related offense" means:

(i) a violation of:

(A) Section 41-6a-502; or

(B) an ordinance that complies with the requirements of:

(I) Subsection 41-6a-510(1); or

(II) Section 76-5-207; or

(ii) an offense involving the illegal:

(A) sale of an alcoholic product;

(B) consumption of an alcoholic product;

(C) distribution of an alcoholic product;

(D) transportation of an alcoholic product; or

(E) possession of an alcoholic product.

(d) "Annual conviction time period" means the time period that:

(i) begins on July 1 and ends on June 30; and

(ii) immediately precedes the fiscal year for which an appropriation under this part is made.

(e) "Municipality" means:

(i) a city; or

(ii) a town.

(f) (i) "Prevention" is as defined by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, by the Division of Substance Abuse and Mental Health within the Department of Human Services.

(ii) In defining the term "prevention," the Division of Substance Abuse and Mental Health shall:

(A) include only evidence-based or evidence-informed programs; and

(B) provide for coordination with local substance abuse authorities designated to provide substance abuse services in accordance with Section 17-43-201.

(2) For purposes of Subsection 32B-2-404(1)(b)(iii), the number of premises located within the limits of a municipality or county:

(a) is the number determined by the department to be so located;

(b) includes the aggregate number of premises of the following:

(i) a state store;

(ii) a package agency; and

(iii) a retail licensee; and

(c) for a county, consists only of the number located within an unincorporated area of the county.

(3) The department shall determine:

(a) a population figure according to the most current population estimate prepared by the Utah Population Estimates Committee;

(b) a county's population for the 25% distribution to municipalities and counties

under Subsection 32B-2-404(1)(b)(i) only with reference to the population in the unincorporated areas of the county; and

(c) a county's population for the 25% distribution to counties under Subsection 32B-2-404(1)(b)(iv) only with reference to the total population in the county, including that of a municipality.

(4) (a) A conviction occurs in the municipality or county that actually prosecutes the offense to judgment.

(b) If a conviction is based upon a guilty plea, the conviction is considered to occur in the municipality or county that, except for the guilty plea, would have prosecuted the offense.

Amended by Chapter 119, 2014 General Session

32B-2-403. Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account created.

(1) (a) There is created in the General Fund a restricted account known as the "Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account."

(b) The account is funded from:

(i) money deposited by the state treasurer in accordance with Section 59-15-109;

(ii) appropriations made to the account by the Legislature; and

(iii) interest described in Subsection (1)(c).

(c) Interest earned on the account shall be deposited into the account.

(2) (a) Consistent with the policies provided in Subsection 32B-1-103(4)(b), money in the account shall be used for statewide public purposes, including promoting the reduction of the harmful effects of substance abuse, over consumption of alcoholic products by an adult, and alcohol consumption by minors, by exclusively funding programs or projects related to prevention, treatment, detection, prosecution, and control of violations of this title and other offenses in which alcohol or substance abuse is a contributing factor except as provided in Subsection (2)(b).

(b) The portion distributed under this part to a county may also be used for the confinement or treatment of persons arrested for or convicted of offenses in which alcohol or substance abuse is a contributing factor.

(c) A municipality or county entitled to receive money shall use the money exclusively as required by this Subsection (2).

(3) The appropriations provided for under Section 32B-2-404 are:

(a) intended to supplement the budget of the appropriate agencies of each municipality and county within the state to enable the municipalities and counties to more effectively fund the programs and projects described in Subsection (2); and

(b) not intended to replace money that would otherwise be allocated for the programs and projects in Subsection (2).

(4) It is the intent of the Legislature that the appropriations distributed under this part be used to fund a balanced approach to reducing the harmful effects of substance abuse, over consumption of alcoholic products by adults, and alcohol consumption by minors. To this end, the Legislature encourages municipalities and counties receiving

money under this part to use the most effective formula allocation to fund evidence-based and evidence-informed prevention programs.

Amended by Chapter 119, 2014 General Session

32B-2-404. Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account distribution.

(1) (a) The money deposited into the account under Section 32B-2-403 shall be distributed to municipalities and counties:

(i) to the extent appropriated by the Legislature, except that the Legislature shall appropriate each fiscal year an amount equal to at least the amount deposited in the account in accordance with Section 59-15-109; and

(ii) as provided in this Subsection (1).

(b) The amount appropriated from the account shall be distributed as follows:

(i) 25% to municipalities and counties on the basis of the percentage of the state population residing in each municipality and county;

(ii) 30% to municipalities and counties on the basis of each municipality's and county's percentage of the statewide convictions for all alcohol-related offenses;

(iii) 20% to municipalities and counties on the basis of the percentage of the following in the state that are located in each municipality and county:

(A) state stores;

(B) package agencies;

(C) retail licensees; and

(D) off-premise beer retailers; and

(iv) 25% to the counties for confinement and treatment purposes authorized by this part on the basis of the percentage of the state population located in each county.

(c) (i) Except as provided in Subsection (1)(c)(ii), if a municipality does not have a law enforcement agency:

(A) the municipality may not receive money under this part; and

(B) the State Tax Commission:

(I) may not distribute the money the municipality would receive but for the municipality not having a law enforcement agency to that municipality; and

(II) shall distribute the money that the municipality would have received but for it not having a law enforcement agency to the county in which the municipality is located for use by the county in accordance with this part.

(ii) If the advisory council finds that a municipality described in Subsection (1)(c)(i) demonstrates that the municipality can use the money that the municipality is otherwise eligible to receive in accordance with this part, the advisory council may direct the State Tax Commission to distribute the money to the municipality.

(2) To determine the distribution required by Subsection (1)(b)(ii), the State Tax Commission shall annually:

(a) for an annual conviction time period:

(i) multiply by two the total number of convictions in the state obtained during the annual conviction time period for violation of:

(A) Section 41-6a-502; or

(B) an ordinance that complies with the requirements of Subsection

41-6a-510(1) or Section 76-5-207; and

(ii) add to the number calculated under Subsection (2)(a)(i) the number of convictions obtained during the annual conviction time period for the alcohol-related offenses other than the alcohol-related offenses described in Subsection (2)(a)(i);

(b) divide an amount equal to 30% of the appropriation for that fiscal year by the sum obtained in Subsection (2)(a); and

(c) multiply the amount calculated under Subsection (2)(b), by the number of convictions obtained in each municipality and county during the annual conviction time period for alcohol-related offenses.

(3) By not later than September 1 each year:

(a) the state court administrator shall certify to the State Tax Commission the number of convictions obtained for alcohol-related offenses in each municipality or county in the state during the annual conviction time period; and

(b) the advisory council shall notify the State Tax Commission of any municipality that does not have a law enforcement agency.

(4) By not later than December 1 of each year, the advisory council shall notify the State Tax Commission for the fiscal year of appropriation of:

(a) a municipality that may receive a distribution under Subsection (1)(c)(ii);

(b) a county that may receive a distribution allocated to a municipality described in Subsection (1)(c)(i);

(c) a municipality or county that may not receive a distribution because the advisory council has suspended the payment under Subsection 32B-2-405(2)(a); and

(d) a municipality or county that receives a distribution because the suspension of payment has been cancelled under Subsection 32B-2-405(2).

(5) (a) By not later than January 1 of the fiscal year of appropriation, the State Tax Commission shall annually distribute to each municipality and county the portion of the appropriation that the municipality or county is eligible to receive under this part, except for any municipality or county that the advisory council notifies the State Tax Commission in accordance with Subsection (4) may not receive a distribution in that fiscal year.

(b) (i) The advisory council shall prepare forms for use by a municipality or county in applying for a distribution under this part.

(ii) A form described in this Subsection (5) may require the submission of information the advisory council considers necessary to enable the State Tax Commission to comply with this part.

Amended by Chapter 119, 2014 General Session

32B-2-405. Reporting by municipalities and counties -- Grants.

(1) A municipality or county that receives money under this part during a fiscal year shall by no later than October 1 following the fiscal year:

(a) report to the advisory council:

(i) the programs or projects of the municipality or county that receive money under this part;

(ii) if the money for programs or projects were exclusively used as required by Subsection 32B-2-403(2);

(iii) indicators of whether the programs or projects that receive money under this part are effective; and

(iv) if money received under this part was not expended by the municipality or county; and

(b) provide the advisory council a statement signed by the chief executive officer of the county or municipality attesting that the money received under this part was used in addition to money appropriated or otherwise available for the county's or municipality's law enforcement and was not used to supplant that money.

(2) The advisory council may, by a majority vote:

(a) suspend future payments under Subsection 32B-2-404(4) to a municipality or county that:

(i) does not file a report that meets the requirements of Subsection (1); or

(ii) the advisory council finds does not use the money as required by Subsection 32B-2-403(2) on the basis of the report filed by the municipality or county under Subsection (1); and

(b) cancel a suspension under Subsection (2)(a).

(3) The State Tax Commission shall notify the advisory council of the balance of any undistributed money after the annual distribution under Subsection 32B-2-404(5).

(4) (a) Subject to the requirements of this Subsection (4), the advisory council shall award the balance of undistributed money under Subsection (3):

(i) as prioritized by majority vote of the advisory council; and

(ii) as grants to:

(A) a county;

(B) a municipality;

(C) the department;

(D) the Department of Human Services;

(E) the Department of Public Safety; or

(F) the Utah State Office of Education.

(b) By not later than May 30 of the fiscal year of the appropriation, the advisory council shall notify the State Tax Commission of grants awarded under this Subsection (4).

(c) The State Tax Commission shall make payments of a grant:

(i) upon receiving notice as provided under Subsection (4)(b); and

(ii) by not later than June 30 of the fiscal year of the appropriation.

(d) An entity that receives a grant under this Subsection (4) shall use the grant money exclusively for programs or projects described in Subsection 32B-2-403(2).

Enacted by Chapter 276, 2010 General Session

Amended by Chapter 276, 2010 General Session, (Coordination Clause)

32B-2-501. Commission's power to establish a state store.

(1) The commission may establish state stores in the numbers and at places, owned or leased by the department, that the commission considers proper for the sale of liquor by employees of the state, in accordance with this title and the rules made under this title.

(2) The commission may not establish a total number of state stores that at any

time exceeds the number determined by dividing the population of the state by 48,000.

(3) The commission may not establish a state store at premises that do not meet the proximity requirements of Section 32B-1-202.

(4) An employee of a state store is considered a department employee and shall meet the qualification requirements for employment in Sections 32B-1-303 and 32B-2-207.

(5) (a) The commission shall ensure that signage installed or replaced at or near a state store, on or after May 11, 2010, complies with Subsection (5)(b) if the signage is:

(i) attached to the exterior of the premises of a state store; or
(ii) not attached to the premises of a state store, but otherwise alerts or directs a person to the location of a state store.

(b) Signage described in Subsection (5)(a) shall contain the following words in the size of lettering required by Subsection (5)(c):

(i) "state"; or
(ii) "State of Utah."

(c) The text described in Subsection (5)(b) shall be in lettering that is equal to or larger than the size of any text on the same signage that refers to "liquor" or "wine."

Amended by Chapter 276, 2010 General Session, (Coordination Clause)

Enacted by Chapter 276, 2010 General Session

32B-2-502. Commission and department duties before establishing a state store.

(1) (a) Before the commission may establish a state store, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission to assure appropriate service to the general population of the state.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.

(2) Before establishing a state store, the commission shall:

(a) determine that the local authority of the locality where the state store will be located is consulted;

(b) determine that the state store complies with the zoning ordinances of the locality where the state store will be located;

(c) consider the locality within which the proposed state store will be located including:

(i) economic factors, such as:

(A) bid price;
(B) lease terms;
(C) operating costs; and
(D) local taxes;

(ii) physical characteristics, such as:

(A) condition of the premises;
(B) space availability;

- (C) parking;
- (D) common areas;
- (E) conformance to building and safety codes;
- (F) delivery access; and
- (G) expandability; and
- (iii) operational factors, such as:
 - (A) tourist traffic;
 - (B) access to the public;
 - (C) demographics;
 - (D) population to be served;
 - (E) the nature of surrounding establishments;
 - (F) proximity to and density of other state stores, package agencies, and retail licensees;
 - (G) proximity to residential communities; and
 - (H) proximity to educational, religious, and recreational facilities; and
- (d) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

32B-2-503. Operational requirements for a state store.

(1) (a) A state store shall display in a prominent place in the store a sign in large letters that consists of text in the following order:

- (i) a header that reads: "WARNING";
- (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";
- (iii) a statement in smaller font that reads: "Call the Utah Department of Health at [insert most current toll-free number] with questions or for more information.";
- (iv) a header that reads: "WARNING"; and
- (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(b) (i) The text described in Subsections (1)(a)(i) through (iii) shall be in a different font style than the text described in Subsections (1)(a)(iv) and (v).

(ii) The warning statements in the sign described in Subsection (1)(a) shall be in the same font size.

(c) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section.

(2) A state store may not sell, offer for sale, or furnish liquor except at a price fixed by the commission.

(3) A state store may not sell, offer for sale, or furnish liquor to:

- (a) a minor;
- (b) a person actually, apparently, or obviously intoxicated;
- (c) a known interdicted person; or
- (d) a known habitual drunkard.

(4) (a) A state store employee may not:

- (i) consume an alcoholic product on the premises of a state store; or
- (ii) allow any person to consume an alcoholic product on the premises of a state

store.

(b) A violation of this Subsection (4) is a class B misdemeanor.

(5) (a) Sale or delivery of liquor may not be made on or from the premises of a state store, and a state store may not be kept open for the sale of liquor:

(i) on Sunday; or

(ii) on a state or federal legal holiday.

(b) Sale or delivery of liquor may be made on or from the premises of a state store, and a state store may be open for the sale of liquor, only on a day and during hours that the commission directs by rule or order.

(6) (a) A minor may not be admitted into, or be on the premises of a state store unless accompanied by a person who is:

(i) 21 years of age or older; and

(ii) the minor's parent, legal guardian, or spouse.

(b) A state store employee that has reason to believe that a person who is on the premises of a state store is under the age of 21 and is not accompanied by a person described in Subsection (6)(a) may:

(i) ask the suspected minor for proof of age;

(ii) ask the person who accompanies the suspected minor for proof of age; and

(iii) ask the suspected minor or the person who accompanies the suspected minor for proof of parental, guardianship, or spousal relationship.

(c) A state store employee shall refuse to sell liquor to the suspected minor and to the person who accompanies the suspected minor into the state store if the suspected minor or person fails to provide information specified in Subsection (6)(b).

(d) A state store employee shall require a suspected minor and the person who accompanies the suspected minor into the state store to immediately leave the premises of the state store if the suspected minor or person fails to provide information specified in Subsection (6)(b).

(7) (a) A state store may not sell, offer for sale, or furnish liquor except in a sealed container.

(b) A person may not open a sealed container on the premises of a state store.

(8) On or after October 1, 2011, a state store may not sell, offer for sale, or furnish heavy beer in a sealed container that exceeds two liters.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-2-504. Delivery of liquor to state store.

(1) Liquor to be sold from a state store may be transported from a warehouse authorized by the department to the state store if transported by a person authorized by the department to transport the liquor to the state store, including a common carrier.

(2) A person, while in or about a vehicle in which liquor is being transported, may not open, break, or allow to be opened or broken, a container containing liquor.

(3) A person may not drink, use, or allow to be drunk or used, liquor while it is in transit under this section.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-2-601. Commission's power to issue package agency.

(1) (a) The commission may, when the commission considers proper, issue authority to operate as a package agency by directing the department to enter into a package agency agreement with a person to sell, offer for sale, or furnish liquor in sealed containers from premises other than those owned or leased by the state.

(b) The commission shall authorize a person to operate a package agency by issuing a record that designates the person in charge of the package agency as a "package agent."

(2) (a) Subject to this Subsection (2), the commission may not issue a total number of package agencies that at any time exceeds the number determined by dividing the population of the state by 18,000.

(b) (i) The commission may issue a seasonal package agency in an area the commission considers proper.

(ii) A seasonal package agency shall be for a period of six consecutive months.

(iii) A seasonal package agency issued for operation during a summer time period is known as a "Seasonal A" package agency. The period of operation for a Seasonal A package agency shall:

(A) begin on May 1; and

(B) end on October 31.

(iv) A seasonal package agency issued for operation during a winter time period is known as a "Seasonal B" package agency. The period of operation for a Seasonal B package agency shall:

(A) begin on November 1; and

(B) end on April 30.

(v) In determining the number of package agencies that the commission may issue under this section:

(A) a seasonal package agency is counted as one-half of one package agency; and

(B) each Seasonal A package agency shall be paired with a Seasonal B package agency.

(c) (i) If the location, design, and construction of a hotel may require more than one package agency sales location to serve the public convenience, the commission may authorize a single package agent to sell liquor at as many as three locations within the hotel under one package agency if:

(A) the hotel has a minimum of 150 guest rooms; and

(B) all locations under the package agency are:

(I) within the same hotel; and

(II) on premises that are managed or operated, and owned or leased, by the package agent.

(ii) A facility other than a hotel shall have a separate package agency for each location where liquor may be sold, offered for sale, or furnished.

(3) (a) A package agent, under the direction of the department, is responsible for implementing and enforcing this title and the rules adopted under this title to the extent this title and the rules relate to the conduct of the package agency and a

package agency's sale of liquor.

(b) A package agent may not be a state employee. A package agent may not be construed to be a state employee or otherwise entitled to any benefit of employment from the state.

(c) A package agent, when selling liquor from a package agency, is considered an agent of the state only to the extent specifically expressed in the package agency agreement.

(4) The commission may prescribe by rule one or more types of package agencies issued under this part that are consistent with this title.

Amended by Chapter 307, 2011 General Session

32B-2-602. Application requirements for a package agency.

(1) Before a person may store, sell, offer for sale, or furnish liquor in a sealed container on its premises under a package agency, the person shall first obtain a package agency issued by the commission in accordance with this part.

(2) To obtain a package agency, a person seeking to be the package agent under this part shall submit to the department:

- (a) a written application in a form prescribed by the department;
- (b) a nonrefundable application fee of \$125;
- (c) written consent of the local authority;
- (d) evidence of proximity to any community location, with proximity requirements being governed by Section 32B-1-202;
- (e) a bond as specified by Section 32B-2-604;
- (f) a floor plan of the premises, including a description and highlighting of that part of the premises in which the person proposes that the package agency be located;
- (g) evidence that the package agency is carrying public liability insurance in an amount and form satisfactory to the department;
- (h) a signed consent form stating that the package agent permits any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the premises of the package agency;
- (i) if the person applying is an entity, verification that a person who signs the package agency application is authorized to sign on behalf of the entity; and
- (j) any other information the commission or department may require.

(3) The commission may not issue a package agency to a person who is disqualified under Section 32B-1-304.

(4) The commission may not issue a package agency for premises that do not meet the proximity requirements of Section 32B-1-202.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-2-603. Commission and department duties before issuing a package agency.

(1) (a) Before the commission may issue a package agency, the department shall conduct an investigation and may hold public hearings to gather information and

make recommendations to the commission to assure appropriate service to the general population of the state.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.

(2) Before issuing a package agency, the commission shall:

(a) determine that the person filed a complete application and is in compliance with Section 32B-2-602;

(b) determine that the person is not disqualified under Section 32B-1-304;

(c) determine that the package agency premises complies with the zoning ordinances of the locality where the package agency will be located;

(d) consider the locality within which the proposed package agency will be located, including:

(i) physical characteristics, such as:

(A) condition of the premises;

(B) square footage;

(C) parking; and

(D) delivery access; and

(ii) operational factors, such as:

(A) tourist traffic;

(B) access to the public;

(C) demographics;

(D) population to be served;

(E) the nature of surrounding establishments;

(F) proximity to and density of other state stores, package agencies, and retail licensees;

(G) proximity to residential communities; and

(H) the extent of and proximity to educational, religious, and recreational facilities;

(e) consider the person's ability to manage and operate a package agency, including:

(i) management experience;

(ii) past retail liquor experience;

(iii) the type of establishment or business in which the package agency may be located;

(iv) hours of operation; and

(v) ability to maintain inventory levels as set by the department; and

(f) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

32B-2-604. Bond related to package agency.

(1) (a) A package agent who has a consignment liquor inventory owned by the state shall post a consignment surety bond payable to the department in the amount of the consignment inventory.

(b) A consignment surety bond shall be conditioned upon a package agent's

return of the unsold consignment liquor inventory at the termination of a package agency agreement.

(2) (a) A package agent that owns the package agency's liquor inventory shall post a cash bond or surety bond:

(i) in the penal amount fixed by the department, except that the penal amount shall be at least \$1,000; and

(ii) payable to the department.

(3) A package agent shall procure and maintain the bond required under this section for as long as the package agent continues to operate as a package agent.

(4) A bond required under this section shall be:

(a) in a form approved by the attorney general; and

(b) conditioned upon the package agent's faithful compliance with this title, the rules of the commission, and the package agency agreement.

(5) (a) If a surety bond posted by a package agency under this section is canceled due to the package agent's or package agency's negligence, the department may assess a \$300 reinstatement fee.

(b) No part of a bond posted by a package agent under this section may be withdrawn:

(i) during the period the package agency is in effect; or

(ii) while a revocation of the package agency is pending against the package agent.

(6) (a) A bond posted under this section by a package agent may be forfeited if the package agency is revoked.

(b) Notwithstanding Subsection (6)(a), the department may make a claim against a bond posted by a package agent for money owed the department under this title without the commission first revoking the package agency.

Amended by Chapter 307, 2011 General Session

32B-2-605. Operational requirements for package agency.

(1) (a) A person may not operate a package agency until a package agency agreement is entered into by the package agent and the department.

(b) A package agency agreement shall state the conditions of operation by which the package agent and the department are bound.

(c) (i) If a package agent or staff of the package agent violates this title, rules under this title, or the package agency agreement, the department may take any action against the package agent that is allowed by the package agency agreement.

(ii) An action against a package agent is governed solely by its package agency agreement and may include suspension or revocation of the package agency.

(iii) A package agency agreement shall provide procedures to be followed if a package agent fails to pay money owed to the department including a procedure for replacing the package agent or operator of the package agency.

(iv) A package agency agreement shall provide that the package agency is subject to covert investigations for selling an alcoholic product to a minor.

(v) Notwithstanding that this part refers to "package agency" or "package agent," staff of the package agency or package agent is subject to the same requirement or

prohibition.

- (2) (a) A package agency shall be operated by an individual who is either:
 - (i) the package agent; or
 - (ii) an individual designated by the package agent.
 - (b) An individual who is a designee under this Subsection (2) shall be:
 - (i) an employee of the package agent; and
 - (ii) responsible for the operation of the package agency.
 - (c) The conduct of the designee is attributable to the package agent.
 - (d) A package agent shall submit the name of the person operating the package agency to the department for the department's approval.
 - (e) A package agent shall state the name and title of a designee on the application for a package agency.
 - (f) A package agent shall:
 - (i) inform the department of a proposed change in the individual designated to operate a package agency; and
 - (ii) receive prior approval from the department before implementing the change described in this Subsection (2)(f).
 - (g) Failure to comply with the requirements of this Subsection (2) may result in the immediate termination of a package agency agreement.
- (3) (a) A package agent shall display in a prominent place in the package agency the record issued by the commission that designates the package agency.
- (b) A package agent that displays or stores liquor at a location visible to the public shall display in a prominent place in the package agency a sign in large letters that consists of text in the following order:
- (i) a header that reads: "WARNING";
 - (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";
 - (iii) a statement in smaller font that reads: "Call the Utah Department of Health at [insert most current toll-free number] with questions or for more information.";
 - (iv) a header that reads: "WARNING"; and
 - (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."
- (c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different font style than the text described in Subsections (3)(b)(iv) and (v).
- (ii) The warning statements in the sign described in Subsection (3)(b) shall be in the same font size.
- (d) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section.
- (4) A package agency may not display liquor or a price list in a window or showcase that is visible to passersby.
- (5) (a) A package agency may not purchase liquor from a person except from the department.
- (b) At the discretion of the department, liquor may be provided by the department to a package agency for sale on consignment.
- (6) A package agency may not store, sell, offer for sale, or furnish liquor in a place other than as designated in the package agent's application, unless the package

agent first applies for and receives approval from the department for a change of location within the package agency premises.

(7) A package agency may not sell, offer for sale, or furnish liquor except at a price fixed by the commission.

(8) A package agency may not sell, offer for sale, or furnish liquor to:

- (a) a minor;
- (b) a person actually, apparently, or obviously intoxicated;
- (c) a known interdicted person; or
- (d) a known habitual drunkard.

(9) (a) A package agency may not employ a minor to handle liquor.

(b) (i) Staff of a package agency may not:

(A) consume an alcoholic product on the premises of a package agency; or
(B) allow any person to consume an alcoholic product on the premises of a package agency.

(ii) Violation of this Subsection (9)(b) is a class B misdemeanor.

(10) (a) A package agency may not close or cease operation for a period longer than 72 hours, unless:

(i) the package agency notifies the department in writing at least seven days before the closing; and

(ii) the closure or cessation of operation is first approved by the department.

(b) Notwithstanding Subsection (10)(a), in the case of emergency closure, a package agency shall immediately notify the department by telephone.

(c) (i) The department may authorize a closure or cessation of operation for a period not to exceed 60 days.

(ii) The department may extend the initial period an additional 30 days upon written request of the package agency and upon a showing of good cause.

(iii) A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) The notice required by Subsection (10)(a) shall include:

- (i) the dates of closure or cessation of operation;
- (ii) the reason for the closure or cessation of operation; and
- (iii) the date on which the package agency will reopen or resume operation.

(e) Failure of a package agency to provide notice and to obtain department authorization before closure or cessation of operation results in an automatic termination of the package agency agreement effective immediately.

(f) Failure of a package agency to reopen or resume operation by the approved date results in an automatic termination of the package agency agreement effective on that date.

(11) A package agency may not transfer its operations from one location to another location without prior written approval of the commission.

(12) (a) A person, having been issued a package agency, may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the package agency to another person, whether for monetary gain or not.

(b) A package agency has no monetary value for any type of disposition.

(13) (a) Subject to the other provisions of this Subsection (13):

(i) sale or delivery of liquor may not be made on or from the premises of a

package agency, and a package agency may not be kept open for the sale of liquor:

- (A) on Sunday; or
- (B) on a state or federal legal holiday.

(ii) Sale or delivery of liquor may be made on or from the premises of a package agency, and a package agency may be open for the sale of liquor, only on a day and during hours that the commission directs by rule or order.

(b) A package agency located at a manufacturing facility is not subject to Subsection (13)(a) if:

(i) the package agency is located at a manufacturing facility licensed in accordance with Chapter 11, Manufacturing and Related Licenses Act;

(ii) the manufacturing facility licensed in accordance with Chapter 11, Manufacturing and Related Licenses Act, holds:

- (A) a full-service restaurant license;
- (B) a limited-service restaurant license;
- (C) a beer-only restaurant license; or
- (D) dining club license;

(iii) the restaurant or dining club is located at the manufacturing facility;

(iv) the restaurant or dining club sells an alcoholic product produced at the manufacturing facility;

(v) the manufacturing facility:

- (A) owns the restaurant or dining club; or
- (B) operates the restaurant or dining club;

(vi) the package agency only sells an alcoholic product produced at the manufacturing facility; and

(vii) the package agency's days and hours of sale are the same as the days and hours of sale at the restaurant or dining club.

(c) (i) Subsection (13)(a) does not apply to a package agency held by a resort licensee if the package agent that holds the package agency to sell liquor at the resort does not sell liquor in a manner similar to a state store.

(ii) The commission may by rule define what constitutes a package agency that sells liquor "in a manner similar to a state store."

(14) (a) Except to the extent authorized by commission rule, a minor may not be admitted into, or be on the premises of a package agency unless accompanied by a person who is:

- (i) 21 years of age or older; and
- (ii) the minor's parent, legal guardian, or spouse.

(b) A package agent or staff of a package agency that has reason to believe that a person who is on the premises of a package agency is under the age of 21 and is not accompanied by a person described in Subsection (14)(a) may:

- (i) ask the suspected minor for proof of age;
- (ii) ask the person who accompanies the suspected minor for proof of age; and
- (iii) ask the suspected minor or the person who accompanies the suspected minor for proof of parental, guardianship, or spousal relationship.

(c) A package agent or staff of a package agency shall refuse to sell liquor to the suspected minor and to the person who accompanies the suspected minor into the package agency if the minor or person fails to provide any information specified in

Subsection (14)(b).

(d) A package agent or staff of a package agency shall require the suspected minor and the person who accompanies the suspected minor into the package agency to immediately leave the premises of the package agency if the minor or person fails to provide information specified in Subsection (14)(b).

(15) (a) A package agency shall sell, offer for sale, or furnish liquor in a sealed container.

(b) A person may not open a sealed container on the premises of a package agency.

(c) Notwithstanding Subsection (15)(a), a package agency may sell, offer for sale, or furnish liquor in other than a sealed container:

(i) if the package agency is the type of package agency that authorizes the package agency to sell, offer for sale, or furnish the liquor as part of room service;

(ii) if the liquor is sold, offered for sale, or furnished as part of room service; and

(iii) subject to:

(A) staff of the package agency providing the liquor in person only to an adult guest in the guest room;

(B) staff of the package agency not leaving the liquor outside a guest room for retrieval by a guest; and

(C) the same limits on the portions in which an alcoholic product may be sold by a retail licensee under Section 32B-5-304.

(16) On or after October 1, 2011, a package agency may not sell, offer for sale, or furnish heavy beer in a sealed container that exceeds two liters.

(17) The department may pay or otherwise remunerate a package agent on any basis, including sales or volume of business done by the package agency.

(18) The commission may prescribe by policy or rule general operational requirements of a package agency that are consistent with this title and relate to:

(a) physical facilities;

(b) conditions of operation;

(c) hours of operation;

(d) inventory levels;

(e) payment schedules;

(f) methods of payment;

(g) premises security; and

(h) any other matter considered appropriate by the commission.

Amended by Chapter 365, 2012 General Session

32B-2-606. Delivery of liquor to package agency.

(1) Liquor to be sold from a package agency may be transported from a warehouse or state store authorized by the department to the package agency if transported by a person authorized by the department to transport the liquor to the package agency, including a common carrier.

(2) A person, while in or about a vehicle in which liquor is being transported, may not open, break, or allow to be opened or broken, a container containing liquor.

(3) A person may not drink, use, or allow to be drunk or used, any liquor while

the liquor is in transit under this section.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-2-607. Return of inventory by package agent.

A package agent shall immediately return to the department liquor previously received from the department on consignment that remains unsold at the time the package agent's package agency agreement terminates or the liquor is subject to immediate seizure by the department.

Enacted by Chapter 276, 2010 General Session